IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

1. S.B. CIVIL WRIT PETITION NO.4158/2007
Rewat Ram & Ors. vs. State of Rajasthan & Ors.

2. S.B. CIVIL WRIT PETITION NO.5523/2005
Manphool Ram & Ors. vs. State of Rajasthan & Ors.

Date : 17.12.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.VK Agarwal, for the petitioners.

Mr.RS Choudhary) for the respondents.
Mr.N Mulchandani, Dy.GA)

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Heard learned counsel for the parties.

These two writ petitions are decided by this common order as they involve same controversy.

It appears from the facts of the case that cultivators of Chak No.30 MMK applied for getting irrigation by including their land with the land of Chak No.29 MMK so that they may get water

supply from the source from which the water is supplied to cultivators of chak no.29 MMK. This application was allowed by the Executive Engineer, Irrigation Division-I, Hanumangarh Sangam vide order dated 11.11.2004. The said order was challenged by the cultivators of Chak No.29 MMK by preferring appeal before the Superintending Engineer, Irrigation Circle, Hanumangarh Sangam. In the memo of appeal, one of the ground was that no notice was given to the cultivators of chak no.29 MMK and another was that their consent was wrongly recorded. On technical grounds also, there were objections which were raised by them. The Superintending Engineer vide order dated 6.7.2005 remanded the matter back to the Executive Engineer after taking note of the fact that though there is a report of consent of cultivators but when the matter was enquired by the District Collector from the Tehsildar, he reported that the cultivators of chak no.29 MMK have not given consent and in view of the above, the consent submitted earlier was not correct. The Superintending Engineer observed that, therefore, the statement of consent requires reconsideration and, therefore, enquiry is necessary. The Superintending Engineer further observed that the relevant material and technical datas about the intensity of irrigation have not

been provided by the Executive Engineer. Therefore, it is necessary to examine the irrigation of past 5 years so that the matter may be examined technically and it may not be disadvantageous to Chak No.29 MMK and if technically feasible relief can be granted to the cultivators of Chak No.30 MMK by giving irrigation from the source from which the cultivators of chak no.29 MMK are getting water than the same relief may be granted to the cultivators of chak no.30 MMK. This order dated 6.7.2005 is under challenge in writ petition no.5523/2005.

Another writ petition no.4158/2007 has been preferred to challenge the decision taken for construction of pucca khala for chak no.29 MMK vide sanction dated 30.3.2007 (Annex.13 to writ petition no.4158/2007). In writ petition no.4158/2007, the petitioner's another contention is that by construction of pucca khala, the petitioners right to get the water by siphon will be adversely affected.

The State as well as private respondents – cultivators of chak no.29 MMK submitted separate replies and contended that no notice was given by the Executive Engineer to the cultivators before passing the order dated 11.11.2004 which was set

aside by the Superintending Engineer. It is submitted that by misrepresenting some of the cultivators of chak no.29 MMK that there will be increase in the size of the outlet, signatures of cultivators were obtained and that has been used as giving consent for land of chak no.30 MMK. It is also submitted that the District Collector enquired into the matter and obtained report from the Tehsildar who opined that earlier alleged settlement was not by the free will of cultivators.

I considered the submissions of the learned counsel for the parties and perused the facts of the case.

It appears that the cultivators of chak no.30 MMK applied for getting water supply from the source of chak no.29 MMK. The consent report of the cultivators was submitted before the Executive Engineer. The respondents' contention is that they were not given any notice before passing any order by the Executive Engineer. However, they submitted their representation to the District Collector under the provisions of Section 24 but that appears to be a representation after decision taken by the Executive Engineer but still the

enquiry was conducted by the District Collector and the report was submitted before the Superintending Engineer who on the basis of the said report was of the view that it castes some doubt on the consent report submitted before the Executive Engineer and, therefore, decided to direct the Executive Engineer to hold an enquiry about the said settlement and consent of the cultivators of chak no.29 MMK in giving consent to the cultivators of chak no.30 MMK for giving irrigation from the source of chak no.29 MMK. The Superintending Engineer further observed that relevant technical details about the intensity of irrigation and its likelihood of achieving the target has not been provided. The petitioners have placed on record copy of report which according to the petitioners was of past 3 years of irrigation of the land in question. However, the Superintending Engineer observed that it should be of 5 years. The petitioners have also placed on record copy of the guidelines issued in this respect and submitted that only three years irrigation details are required and that report was already available on the record of the Superintending Engineer. It is also clear from the replies filed by the private respondents and the State that they have not denied the report of 3

years irrigation of the land in question. Be it as it may be. Therefore, the Superintending Engineer could not have remanded the matter on this issue.

All the controversy raised in the writ petition involves disputed questions of facts with respect to whether the consent was obtained from the cultivators ? Whether giving irrigation to chak no.30 MMK from chak no.29 MMK is feasible ? and whether by constructing pucca khala, the petitioners' siphon irrigation will be adversely affected ? Since the matter has been remanded by the Superintending Engineer and the factual enquiry cannot be held here, therefore, I do not find any reason to interfere in the order of remand passed by the Superintending Engineer wherein he has observed that the consent of the cultivators be re-examined and further observed that the technical details are required. However, it is made clear that the technical details as required by Rules and guidelines only are required to be considered and, therefore, it is ordered that instead of taking details of 5 years irrigation of the land in question, if Rules or guidelines provide for taking into consideration of three years details, the same may be considered by the Executive Engineer who is to take decision

after remand.

In addition to above, the other writ petition has been filed to challenge the order of opening of construction of pucca khala vide sanction dated 30.3.2007. The issue raised by the petitioners is of absolutely technical nature in view of the fact that according to the petitioners, if pucca khala is constructed, their rights will be adversely affected whereas according to the learned counsel for the respondents, the petitioners will not be adversely affected. There is no finding on this issue. Therefore, while deciding the issue by the Executive Engineer, this issue may also be examined and finding may be recorded after hearing both the parties.

Since the matter is in respect of irrigation facility, therefore, it requires urgent consideration and since the construction of pucca khala is yet to be constructed, it will be appropriate to direct both the parties to appear before the Executive Engineer on 27.12.2007. The Executive Engineer is expected to hear both the parties and pass an appropriate order within a period of 15 days thereafter and till then, pucca khala may not be constructed.

With the aforesaid observations, both these writ petitions are disposed of.

(PRAKASH TATIA), J.

S.Phophaliya